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MEMO ENDORSED

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July 7, 2008

Via facsimile

The Honorable Colleen McMahon
United States District Judge
United States Courthouse
500 Pearl Street
New York, New York 10007

No sur-replies
Colleen McMahon
7/8/08

Wilhelmsen Premier Marine Fuels AS v. UBS Provedores Pty Ltd. et al.
SDNY Docket #: 07 Civ. 5798 (CM)

Honorable Madam:

We write to oppose Defendants' request to file a sur-reply brief made on grounds that Wilhelmsen allegedly "changed" the basis for its motion, which resulted from Defendants only revealing on June 17, 2008 the full content of Invoice 10039. Defendants argue that the only information redacted from Invoice 10039 was the amount. But before the amounts were revealed, the Invoice read as if there were *five* line items listed – the "Claim Dated 7th March, 2007" (noted as "1 EACH" on the invoice) and the four listed vessels. Only after the amounts were revealed could it be seen that only the listed *four vessels* were claimed in that invoice.

Defendants' actions – and their contentions now – show the inherent danger in their without permission (and against the terms of the Settlement Agreement) submission of the claims documents to the Court for *in camera* review. Only after the pricing information could be seen was it clear that Defendants Invoice 10039 did not claim for the very vessels that Defendants claimed it had under the terms of the Settlement Agreement.

Finally, reply briefs are allowed to rebut arguments made in the non-movant's opposition papers. Defendants sought to use the unredacted versions of Invoice 10039 to support its opposition; Wilhelmsen has explained why that invoice actually supports Wilhelmsen's position. For these reasons, Wilhelmsen respectfully submits that a sur-reply should not be permitted or, if a sur-reply is allowed, that it should have the final word on the application.

Respectfully submitted,

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